

Serial: 171657

IN THE SUPREME COURT OF MISSISSIPPI

No. 2011-FC-00143-SCT

FILED

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

SEARS ROEBUCK & COMPANY

Appellant

v.

LISA LEARMONTH

Appellee

ORDER

Following due consideration, this Court finds that supplemental briefing is required.

Mississippi Code Section 11-1-60(2)(b) provides that “(b) In any civil action filed on or after September 1, 2004, other than those actions described in paragraph (a) of this subsection, in the event *the trier of fact* finds the defendant liable, *they shall not award* the plaintiff more than One Million Dollars (\$1,000,000.00) for noneconomic damages.” Miss. Code Ann. § 11-1-60(2)(b) (Supp. 2011) (emphasis added). In the case *sub judice*, the record reflects that “the jury found Sears liable for Learmonth’s injuries and awarded her \$4 million in compensatory damages. The verdict on its face did *not* divide the award into separate categories” *Learmonth v. Sears, Roebuck & Co.*, 2011 WL 150236, at *3 (5th Cir. Jan. 24, 2011) (emphasis added). However, Sears and Learmonth have stipulated that the total award included \$2,218,905 in noneconomic damages. *See id.* at *7. Supplemental briefing is required to address the following issue:

(1) In light of the language in Mississippi Code Section 11-1-60(2)(b) that “the trier of fact” cannot “award the plaintiff” more than \$1 million for noneconomic damages, this Court’s recent pronouncement on the effect of failing to request a jury instruction that segregated economic damages from

noneconomic damages,¹ and the statement that the jury did not divide the award into separate categories to distinguish between economic and noneconomic damages, what fact(s) and/or legal authority exist for this Court to accept a stipulation regarding the amount of noneconomic damages found by the jury?

A supplemental brief addressing this issue is to be filed by Sears no later than Monday, October 17, 2011, at 5:00 p.m. Learmonth's response is to be filed no later than Monday, November 14, 2011, at 5:00 p.m. A reply brief from Sears is to be filed no later than Monday, November 28, 2011, at 5:00 p.m. Sears' supplemental brief and Learmonth's response are not to exceed twenty-five (25) pages in length. Sears' reply brief is not to exceed ten (10) pages in length.

IT IS THEREFORE ORDERED that a supplemental brief is to be filed by Sears no later than Monday, October 17, 2011, at 5:00 p.m. Learmonth's response is to be filed no later than Monday, November 14, 2011, at 5:00 p.m. A reply brief from Sears is to be filed no later than Monday, November 28, 2011, at 5:00 p.m.

SO ORDERED, this the 15 day of September, 2011.



MICHAEL K. RANDOLPH, JUSTICE

¹See *InTown Lessee Assocs., LLC v. Howard*, __ So. 3d __, 2011 WL 2569287, at *12 (June 30, 2011) (“This Court does not engage in speculation or conjecture, and it would be nothing more than supposition for us to try to guess what amount the jury awarded in economic damages and what amount it awarded in noneconomic damages.”).